

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FIFTY-SIX HOPE ROAD MUSIC, LTD.,
et al., } 2:08-cv-00105-PMP-GWF
Plaintiffs, }
v. } **ORDER**
A.V.E.L.A., INC., *et al.*, }
Defendants. }

On January 21, 2011, the Jury returned verdicts in favor of Plaintiffs, finding that Defendants A.V.E.L.A., (“AVELA”), Leo Valencia, Sci-Fi Productions, Inc., dba X One X Movie Archive, Inc., (“X1X”) (collectively the “AVELA Defendants”), JEM Sportswear, Inc. (“JEM”) and Central Mills, Inc. (“Freeze”) willfully infringed Plaintiffs’ rights in the persona and identity of Bob Marley. (Doc. #301). On February 14, 2011, the Court entered a Partial Monetary Judgment and Permanent Injunction (Doc. #307), and in accord with the verdict of the Jury, entered an Monetary Judgment in the amount of \$300,000.00 in favor of Plaintiffs and against the AVELA Defendants.

On June 21, 2011, Plaintiffs filed a Motion for Entry of Judgment for an Award of Defendants Profits and Increased Profits and For Increased Profits Pursuant to 15 U.S.C. §1117 (Doc. #329). Post-trial discovery has been taken concerning this matter, and on May 16, 2012, the Court conducted a hearing regarding the foregoing motion. (Doc. #377).

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1 Title 15, U.S.C. §1117(a) permits an award to Plaintiffs of Defendants' profits
2 based on a violation of the Lanham Act, in the Court's discretion, and subject to principles
3 of equity. Plaintiffs correctly argue that Defendants' gross revenues are established by the
4 Stipulation Re: Defendants' Gross Sales and Gross Receipts (Doc. #247), at \$362,280.00
5 for the AVELA Defendants, \$64,029.00 for Freeze, and \$2,791,232.00 for JEM.
6 Defendants contend the foregoing gross revenues must be reduced by deductible costs
7 incurred in generating the gross profits. In this regard, Defendants correctly argue that they
8 successfully prevailed before trial on three of the five claims brought by Plaintiffs in this
9 action. Additionally, Defendants argue that the \$300,000.00 damages award on the
10 interference claim already made by the Jury, and the injunctive relief granted by the Court,
11 are sufficient to satisfy any claim for damages Plaintiffs are shown to have suffered. Thus,
12 argue Defendants, the Court should exercise its discretion under §1117(a) and deny
13 Plaintiffs' motion for an award of Defendants' profits and for enhanced profits.

14 The Court rejects JEM's argument that the evidence at trial was insufficient to
15 support the Jury's verdicts. The evidence that JEM acted with an intent to deceive
16 consumers or that JEM caused actual money or reputational damages to Plaintiffs or to the
17 Marley persona is weak, and in the view of this Court does not warrant a request for an
18 enhanced award against JEM. The Court concludes that any award of profits generated by
19 JEM by the sale of Marley products should be limited to \$413,638.29 which the Court finds
20 represents JEM's net gross profits after deduction of all direct costs established in the
21 record before the Court.

22 Similarly, the Court finds that the stipulated gross revenues garnered by Freeze
23 from the sale of Marley t-shirts of \$64,029.00 should be reduced by \$44,753.46 incurred as
24 costs of production and royalties, warranting a recovery in favor of Plaintiffs only of
25 Freeze's net profits in the amount of \$19,246.54.

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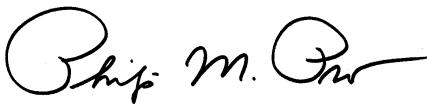
1 The Court considers the evidence adduced at trial to be significantly stronger
2 with respect to the willfulness of the AVELA Defendants. Nonetheless, the award of
3 \$300,000.00 against the AVELA Defendants on the interference claim is significant. The
4 Court further finds that beyond the \$15,000.00 royalty paid to Roberto Rabanne, the
5 AVELA Defendants have failed to demonstrate entitlement to deductions against gross
6 revenue incurred with respect to V International Publishing, Inc., or for purported trade
7 show overhead. The Court thus finds the AVELA Defendants' net profits of \$348,543.00
8 are attributable to their infringement, are hence ill-gotten profits which should, in accord
9 with §1117(a) be disgorged to Plaintiffs. The Court, however, rejects Plaintiff's arguments
10 for an additional enhanced profits award against the AVELA Defendants.

11 **IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Entry Of Judgment
12 For An Award Of Defendants' Profits (Doc. #329) is **GRANTED** to the extent that
13 Defendant JEM shall, within 30 days of the date of this Order pay to Plaintiffs the sum of
14 \$413,638.29, Defendant Freeze shall, within 30 days of the date of this Order pay to
15 Plaintiffs the sum of \$19,246.54, the AVELA Defendants shall, within 30 days of this
16 Order pay to Plaintiffs the sum of \$348,543.00 as and for lost profits.

17 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Entry of Judgment for
18 an Award of Defendants Profits and Increased Profits and For Increased Profits Pursuant to
19 15 U.S.C. §1117 (Doc. #329) is **DENIED** in all other respects.

20 **IT IS FURTHER ORDERED** that the Clerk of Court shall forthwith enter
21 Judgment in accord with the monetary awards Ordered above.

22 DATED: July 3, 2012.

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PHILIP M. PRO
26 United States District Judge